

REMARKS

I. STATUS OF THE APPLICATION

Claims 1-33 were originally filed in the present case. Claims 34-44 were added in a Preliminary Amendment mailed May 14, 2004. In an Amendment accompanying the Response to Office Action mailed May 17, 2005, the Applicants cancelled claims 1-44, and added claims 45-83. In an Amendment and Response to the Final Office Action of October 13, 2006 the Applicants amended claims 45 – 49, 74 and 75. Claims 48, 49, 55-72, and 81-83 have been withdrawn from consideration by the Examiner in the Final Office Action of October 13, 2006. In the Amendment and Response to the Office Action of March 30, 2007 claim 75 was amended. In the Amendment and Response to Office Action of July 17, 2007, claims 45, 46, 73, 75, were amended, and claims 84-87 were added. In the Office Action of June 17, 2008 the Examiner has withdrawn claims 85-87 from examination. In the present Amendment and Response to the Office Action of June 17, 2008 claim 84 is amended. Therefore, claims 45-47, 50-54, 73-80 and 84 are currently pending in the application.

Applicants submit that the amended claim adds no new subject matter. Support for the amended claim can be found throughout the Specification and drawings at, for example, page 33, lines 14-20.

The Applicants note that all amendments of claims are made without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG),¹ and without waiving the right to prosecute the amended claims (or similar claims) in the future.

In the Office Action of June 17, 2008 there are 4 rejections. The currently pending rejections are:

¹ 65 Fed. Reg. 54603 (Sept. 8, 2000).

1. Claim 84 is rejected under 35 U.S.C. 112, second paragraph as allegedly begin indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.
2. Claims 45, 46, 47, 50, 51, 53, 73, 75-80 and 84 are rejected under “35 U.S.C. 102(b)” as allegedly being “anticipated by Reed” (US Patent #4,695,161) (hereinafter “Reed”) in view of Brown (US Patent #2,450,712) (hereinafter “Brown”).

NOTE: In view of the substance of the rejection below, Applicants believe the Examiner has erroneously made a rejection under “35 U.S.C. 102(b)” , but meant instead to make a rejection under 35 U.S.C. 103(a).

3. Claims 52 and 54 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Reed and Brown as applied to claims 45 and 46 above, and further in view of of Wascher et al. (US Patent #5,491,546) (hereinafter “Wascher”).
4. Claim 74 is rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Reed and Brown as applied to claim 45 above, and further in view of Cohen (US Patent #5,375,072) (hereinafter “Cohen”).

II. Claim Rejections

A. 35 USC §112

In the Office Action of June 17, 2008 the Examiner notes:

“Claim 84 recites the limitation “the first focal plane”. There is insufficient antecedent basis for this limitation in the claim in that no focal planes have been previously recited and it is not clear to what the claim is attempting to limit by the

recitation “the reticle is *configured* in the first focal plane.” (Office Action of June 17, 2008, page 3.)

Applicants respectfully disagree with the Examiner’s assertion that the claim is indefinite. However, in order to further the business interests of the Applicants, and while reserving the right to prosecute the original (or similar) claims in the future, Applicants have amended claim 84 to recite “a first focal plane”. With regard to the clarity of this element, the Specification recites:

“When the reticle is mounted between the objective lens and the variable power optical components 16, the selected aiming point (as described in more detail below) on the reticle of the present invention does not vary as the shooter zooms the scope in and out to find the most desirable power for a particular shot. The reticle of the present invention is thus in the first focal plane so that the reticle markings scales are proportional to the image when viewed through the scope. Thus, a unit of measure is consistent no matter the magnification.” (Specification, page 33, lines 14-20.)

In view of the above, Applicants request that this rejection be withdrawn.

B. 35 USC §103(a)

A *prima facie* case of obviousness requires the Examiner to cite to a reference which a) discloses all the elements of the claimed invention, b) suggests or motivates one of ordinary skill in the art to combine the claim elements to yield the claimed invention, and c) provides a reasonable expectation of success should the claimed combination be carried out. Failure to establish any one of these three requirements negates a finding of a *prima facie* case and, without more, entitles the Applicants to allowance of the claims in issue. (MPEP)

1. Claims 45, 46, 47, 50, 51, 53, 73, 75-80 and 84 are not obvious over Reed in

view of Brown

In the Office Action of June 17, 2008 the Examiner notes:

“Brown teaches a reticle comprising a plurality of simultaneously visible secondary horizontal cross-hairs intersecting at predetermined distances a simultaneously visible primary vertical cross-hair, and a plurality of simultaneously visible secondary vertical cross-hairs intersecting at predetermined distances at least some of the secondary horizontal cross-hairs. Because both references teach reticles for sighting devices, it would have been obvious to one skilled in the art to substitute one reticle for the other to achieve the predictable result of increasing the number of cross-hairs on a reticle.”
(Office Action of June 17, 2008, page 4.)

Applicants respectfully disagree. The rejection’s combination of Reed and Brown fails to teach not just one but multiple elements of the presently claimed invention.

Brown discloses a gunsight made up of a plurality of mirrors and lenses each engraved with a single reticle with a single horizontal and a single vertical cross-hair. See, for example:

“Fig. 3 is an enlarged view of one of the reticles of the gun sight.” (Brown, Column 1, lines 25-26.) (Underlining added.)

And:

“The reticle is shown in the form of a cross in Fig. 3”. (Brown, Column 3, lines 3-4.)

And:

“On the surface 5 of plate 3, in line with the principal axis of each pair of lenses 2

and **6** is placed a reticle **8**. There are therefore thirty-six reticles on surface **5** in the embodiment of the invention shown in Figs. 1 and 2.” (Brown, Column 2 line 54 – to Column 3, line 3.) (Underlining added.)

And:

“Reticles **23** are engraved on the rearward surface **20** opposite each concave mirror at the focus and on the principal axes of each mirror. Adherent light reflecting material, such as a colored paint, is rubbed into the engraved reticle.” (Brown, Column 3, lines 53-56., referring to Figure 4.)

In the Office Action of June 17, 2008 the Examiner does not indicate where the “primary vertical cross-hairs”, “primary horizontal cross-hairs”, “secondary horizontal cross-hairs” and “secondary vertical cross-hairs” of the presently claimed invention are to be located in Brown. Brown does not label these features in either the Specification or in the Drawings, nor does Brown teach or suggest their use. Brown’s “composite optical system” (Brown, Column 3, line 21) is never disclosed as “a reticle” anywhere in Brown’s Specification, Drawings or Claims.

To the contrary, Brown discloses that “adjacent edges” of abutting lenses and mirrors (Brown, Column 4, line 62) are “without intervening space” (Brown Column 1, lines 37-38), and “without interstices” (Brown, Column 4, line 75). Brown’s lenses “are placed contiguous to each other in horizontal and vertical rows so that no intervening space exists between them.” (Brown, Column 1, lines 50-53). Moreover, Brown’s lenses and their abutting edges are transparent, not visible:

“Lenses 2 and 6 and plates 3 and 9 may be formed from glass or from transparent plastic material. “ (Brown, Columns 3, lines 38-39.)

Clearly, the abutting edges of Brown’s lenses and mirrors are not simultaneously visible primary, secondary, vertical, and horizontal cross-hairs that provide an aiming point. Accordingly, Brown does not teach a reticle with secondary horizontal cross-hairs.

Brown does not teach a reticle with secondary vertical cross-hairs. Brown does not teach simultaneously visible secondary horizontal or vertical cross-hairs. Nor does Brown teach an aiming point at the intersection of at least one vertical and at least one horizontal simultaneously secondary cross-hairs.

Applicants note that Brown fails to teach not one, but multiple elements of the presently claimed invention. Reed fails to remedy these defects. In view of the above, the Applicants request that this rejection be withdrawn.

Moreover, Applicants note that the Examiner has failed to indicate why an artisan of ordinary skill seeking a “gunsight which permits considerable movement of the head in all directions in sighting” (Brown, Column 1, lines 10-13), would turn to Reed for guidance in making the Examiner’s combination. Applicants also note that the Examiner has failed to indicate how an artisan of ordinary skill would have a reasonable expectation of success in combining Brown’s panels of 36, 100, or even more abutting mirrors and lenses, each engraved with its own reticle, with the target acquisition device of Reed to arrive at the presently claimed invention.

In view of the above, the Applicants request that this rejection be withdrawn.

2. Claims 52 and 54 are not obvious over Reed in view of Brown and further in view of Wascher

Claims 52 and 54 depend upon independent claim 45. Applicants note that claims 52 and 54 are not obvious for at least the same reasons that claim 45 is not obvious. As discussed above (Section II.B.1.) Brown fails to teach not just one but multiple elements of the presently claimed invention including, for example, a reticle with secondary horizontal cross-hairs, a reticle with secondary vertical cross-hairs, simultaneously visible secondary horizontal or vertical cross-hairs, or an aiming point at the intersection of at least one vertical and at least one horizontal simultaneously visible secondary cross-hairs. Reed and Wascher fail to remedy these defects.

In view of the above, the Applicants request that this rejection be withdrawn.

Moreover, Applicants note that the Examiner has failed to indicate why an artisan of ordinary skill seeking a “gunsight which permits considerable movement of the head

in all directions in sighting” (Brown, Column 1, lines 10-13), would turn to Reed and Wascher for guidance in making the Examiner’s combination. Applicants also note that the Examiner has failed to indicate how an artisan of ordinary skill would have a reasonable expectation of success in combining Brown’s panels of 36, 100, or even more abutting mirrors and lenses, each engraved with its own reticle, with the target acquisition devices of Reed and Wascher to arrive at the presently claimed invention.

In view of the above, the Applicants request that this rejection be withdrawn.

3. Claims 74 is not obvious over Reed and Brown and further in view of Cohen

Claim 74 depends upon independent claim 45. Applicants note that claim 74 is not obvious for at least the same reasons that claim 45 is not obvious. As discussed above (Section II.B.1.), Brown fails to teach not just one but multiple elements of the presently claimed invention including, for example, a reticle with secondary horizontal cross-hairs, a reticle with secondary vertical cross-hairs, simultaneously visible secondary horizontal or vertical cross-hairs, or an aiming point at the intersection of at least one vertical and at least one horizontal simultaneously visible secondary cross-hairs. Reed and Cohen fail to remedy these defects.

In view of the above, the Applicants request that this rejection be withdrawn.

Moreover, Applicants note that the Examiner has failed to indicate why an artisan of ordinary skill seeking a “gunsight which permits considerable movement of the head in all directions in sighting” (Brown, Column 1, lines 10-13), would turn to Reed and Cohen for guidance in making the Examiner’s combination. Applicants also note that the Examiner has failed to indicate how an artisan of ordinary skill would have a reasonable expectation of success in combining Brown’s panels 36, 100, or even more abutting mirrors and lenses, each engraved with its own reticle, with the target acquisition devices of Reed and Cohen to arrive at the presently claimed invention.

In view of the above, the Applicants request that this rejection be withdrawn.

CONCLUSION

Should the Examiner believe that a telephone interview would aid in the prosecution of this application the Applicants encourage the Examiner to call the undersigned collect at (608) 218-6900.

Dated: November 17, 2008

/David A. Casimir/

David A. Casimir
Registration No.: 42,395
CASIMIR JONES, S.C.
440 SCIENCE DRIVE, SUITE 203
Madison WI 53711
(608) 218-6900